

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Media Bureau Seeks Comment on)
Whether Comcast-NBCU Benchmark)
Condition Needs Clarification and Whether)
A Proposed Third Protective Order for)
Compliance Should be Adopted)

MB Docket No. 10-56

FILED/ACCEPTED

MAR 16 2012

Federal Communications Commission
Office of the Secretary

MOTION FOR EXTENSION OF TIME

The undersigned content companies and their affiliates (collectively, the “Content Companies”), pursuant to Section 1.46 of the Commission’s rules, 47 C.F.R. § 1.46, respectfully request that the Commission extend the time for filing in connection with the above-captioned matter¹ so that interested entities will have at least 30 days to prepare comments and replies. Specifically, the Content Companies request that the deadline for filing comments be extended until April 12, 2012, and that the deadline for filing reply comments be extended until May 14, 2012. The exceptionally short filing windows set forth in the *Public Notice* (14 days for comments; 7 for replies) would make it difficult for the Commission to receive full and informed responses to the vitally important issues raised in this proceeding. The current deadlines also would not provide affected businesses – especially third parties that have been drawn into this matter through no action of their own – a meaningful opportunity to develop a complete record for the Commission’s consideration.

¹ See *In re Media Bureau Seeks Comment on Whether Comcast-NBCU Benchmark Condition Needs Clarification and Whether a Proposed Third Protective Order for Compliance Should be Adopted*, Public Notice, MB Docket No. 10-56; DA 12-394 (rel. Mar. 13, 2012) (“*Public Notice*”).

As the *Public Notice* makes clear, the Commission is considering steps to resolve a dispute between Comcast Corp. and NBCUniversal Media, LLC (together, “C-NBCU”), on the one hand, and an online video distributor (“OVD”), on the other hand.² The Content Companies are merely innocent bystanders who would be severely injured by the proposal contemplated in the *Public Notice*. They are not parties to the controversy, nor have they sought (nor are they seeking) any FCC action or benefit. Quite the contrary, they have been dragged into this matter against their will, solely because the Commission arbitrarily defined the class of C-NBCU “peers” to include the specific entities that comprise the Content Companies’ group.³ The action the FCC takes here could have a profound effect – potentially a severe anticompetitive effect – on each of the Content Companies’ businesses, not to mention the marketplace for distribution of video programming.

Specifically, the C-NBCU proposal under review in the *Public Notice*⁴ contemplates the abrogation of the confidentiality provisions of private commercial agreements and the compelled disclosure to one of the Content Companies’ direct competitors of highly confidential and extremely sensitive competitive information that lies at the heart of how the Content Companies conduct their businesses. Disclosure of the material terms of the Content Companies’ programming agreements with OVDs would inflict substantial harm on the marketplace and place the Content Companies at a considerable competitive disadvantage. That is why these contracts are maintained in the strictest confidence, with rigorous confidentiality and non-

² See *Public Notice*, at 1.

³ See *In re Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc., for Consent to Assign Licenses and Transfer Control of Licenses*, 26 FCC Rcd 4238 (2011) (the “Order”), at Appendix A.

⁴ See *Public Notice*, at 2-3.

disclosure provisions. The potential competitive harm is greatest where, as here, the prospective recipients of confidential information not only compete directly with the Content Companies in the production and packaging of programming and program services, but also operate the nation's largest multichannel video programming distributor of those services. Not surprisingly, the Commission itself "has consistently recognized that disclosure of programming contracts between multichannel video program distributors and programmers can result in substantial competitive harm to the information provider"⁵

Given the stakes, it is in the Commission's interest to provide the Content Companies a full and fair opportunity to analyze the ramifications presented by C-NBCU's proposal and to fully evaluate and prepare appropriate legal and policy arguments for the FCC's consideration.⁶ The Content Companies respectfully submit that the filing windows set forth in the *Public Notice* provide an insufficient amount of time in light of the far-reaching impact that this proceeding could have on numerous private businesses. Grant of the requested brief extension would not cause any public interest harm or prejudice, nor would it result in harm to C-NBCU or any OVD with which it is negotiating. Indeed, the Commission already has provided C-NBCU and OVDs the ability to utilize arbitration to resolve any bargaining impasses – with respect to both whether an OVD is qualified under the *Order* and what the fair market value is for contested programming rights.⁷ Any inconvenience to C-NBCU and OVDs resulting from a temporary delay in the comment cycle pales in comparison to the dramatic harm that would be caused if the

⁵ *In re Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 13 FCC Rcd 24816, 24852 (1998).

⁶ *See id.* at 24856 (agreeing that if "information belongs to third parties, they should be afforded the opportunity to participate in the Commission proceeding resolving the confidentiality issue").

⁷ *See Order*, at Appendix A, Section VII.

FCC were to compel disclosure of programming agreements before giving the Content Companies an adequate opportunity to weigh in.

Under these circumstances, the Content Companies respectfully request that interested participants in this matter be given a full 30 days from the release of the *Public Notice* to file comments (and an additional 30 days from that date to file reply comments). If the FCC grants this request, comments would be due April 12, 2012; reply comments would be due May 14, 2012. Because this extension will serve the public interest by facilitating the development of a complete record, and by enabling participants in this proceeding to present to the FCC the full range of legal and policy considerations that warrant review, the Content Companies submit that good cause exists for this request to be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Tracey M. Combs, hereby certify that copies of the foregoing Motion for Extension of Time were sent this 16th day of March 2012, via electronic mail (and, where indicated, Federal Express), to the following:

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